

IN THE
SUPREME COURT OF THE UNITED STATES

October Term,

No.



76-1854

EDWARD J. LARKIN and JULIA LARKIN,
Petitioners,
v.

DAVID A. FARRELL, Cayuga County Treas-
urer, et al.,
and

TOWN BOARD OF THE TOWN OF FLEMING,
Cayuga County, et al.,

New Party Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FOURTH JUDICIAL
DEPARTMENT, and to the COURT OF APPEALS
OF THE STATE OF NEW YORK

GEORGE DACY
26 Lewis Street
Auburn, New York 13021

Tel. No. (315) 252-1444

Counsel for Petitioners

June 6, 1977

INDEX

	Page
Jurisdiction - - - - -	3
Questions presented - - - - -	3
1. Whether a lien can be levied on citizen's-taxpayers real properties under and pursuant to a statute, N.Y. Town Law § 198, 198 (3d) that a County acts under in attempting to impose the tax lien and to seize their real prop- erties when the said citizens are outside of the terms and authority of the statute. - - - - -	3
2. Whether a Water Tax and delinquent bill can be passed legally & consti- tutionally under a statute, N.Y. Town Law § 198, 198 (3d) that a County acts under when the terms and authority of the said statute are inapplicable to the citizens-taxpayers.- - - -	3,4
3. Whether the poisonous fruits of offi- cial illegality, void, unconstitutional,	

without jurisdiction, flagrant violations of the Constitution and the statutes by the Town Board binds the other subdivisions of the State - - - - - 4

4. Whether, when a statute, Town Law

§ 198, 198 (3d) is attacked as wholly inapplicable by its stated terms therein to citizens-taxpayers real property owners, it may be challenged in judicial proceedings other than those prescribed by the Real Property Tax Law, or any statute as "exclusive" when the invalidity and total inapplicability affects the entire statute, including the limitation and restrictions on the remedy provided in it. - - - - - 4

5. Whether the Courts failure to give citizens-taxpayers real property owners, Larkin, a full, factual, meaningful hearing so that the true record facts could be presented with constitutional

effective assistance of Counsel deprived them of due process of law, making it possible to dispose of their properties without due process of law, equal protection of the laws, and fundamental fairness - - - - -4,5

6. Whether the deliberate suppression of evidence favorable to citizens-taxpayers real property owners would in itself be a deprivation of rights, a constitutional violation of due process of law, equal protection of the laws, of fundamental fairness; and is blatant invidious prejudicial discrimination - - - - -5

7. Whether the State of New York, any subdivision thereof, can deny citizens-taxpayers real property owners their constitutional right to have rights by the State's rule making and legislation applied which would abrogate the said citizens' rights under color of right

and color of law, with irreparable prejudicial application & interpretation by said State as to citizens-taxpayers real property owners of Water District No. 3 - - - - -	5,6
Constitutional provisions and Statutes Involved - - - - -	6
Statement of the Case - - - - -	6-11
Argument - - - - -	11-23
Reasons for Granting the Writ - - -	23-25
Conclusion - - - - -	25
Appendix:	
Judgment N.Y. State Court of Appeals	26
Judgment Memorandum of Appellate Division, Fourth Department, N.Y. State - - - - -	28-34
Order, Supreme Court, Cayuga County, N.Y. - - - - -	34-39
61 McKinney's N.Y. Town Law, § 198, at p. 41. - - - - -	40-43

CITATIONS:

Adams v. Washington & Saratoga R.R. Co.,	
10 N.Y. 328 - - - - -	20,21
Allied Stores of Ohio, Inc., v. Bower	
358 US 522 - - - - -	22
Boyd v. Gullett, 64 FRD 169 - - - -	22
Com'r v. Shapiro, 96 S Ct 1062 - -	23
Conley v. Gibson, 355 US 41 - - - -	22
Dennis v. U.S. 341 US 494 - - - -	22
Ex parte Virginia, 100 US 339 - -	17
Laing v. United States, 96 S Ct 473 -	23
Lynch v. Household Finance Corp.,	
405 US 538 - - - - -	12
Matter of Burke v. Sugarman,	
33 NY2d 39 - - - - -	22
Matter of Crystal v. City of Syracuse,	
47 AD2d (1975) at p. 30 - - - -	12
McNabb v. United States, 318 US 332 -	22
Mullary v. Anderson, 342 US 415 - -	23
New England Divisions Case, 261 US 184 -	22
Silverthorne Lumber Co. v. United States	

	vi	Page
251 US 385 - - - - -	- - - - -	22
Whitney v. Thomas, 23 NY 281 - - - -	- - - -	12
Yale & Towne Mfg., Co. 252 US 60 - -	- -	23
Miscellaneous: 18 USC § 242 - - -	- - -	23

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No. ---

EDWARD J. LARKIN and JULIA LARKIN,

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DAVID A. FARRELL, Cayuga County Treasurer,
et al.,

Respondents,

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TOWN BOARD OF THE TOWN OF FLEMING, Cayuga
County, et al.,

New Party Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
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DEPARTMENT, and to the COURT OF APPEALS
OF THE STATE OF NEW YORK

Petitioners Edward J. Larkin and Julia
Larkin respectfully pray that a writ of
certiorari issue to review the judgment
of the Supreme Court of the State of

2.
New York, Appellate Division, Fourth
Judicial Department, entered in this
proceeding on May 28th, 1976, and to
review the judgment of the New York State
Court of Appeals entered in this proceed-
ing on March 9, 1977, & written notice of
entry thereof served by mail in envelope
postmarked MAR 10 AM 1977.

OPINION BELOW

No opinion was rendered by Court of
Appeals of New York State, 40 NY2d 917
(1977). Memorandum of Appellate Division,
Fourth Dept., N.Y. State, 52 AD2d
1069, May 28, 1976 and Order of Supreme
Court, Cayuga County dated December 18,
1974 appear in the Appendix.

STATEMENT OF GROUNDS

The judgment date of Court of Appeals
of the State of New York is Feb. 22, 1977;
the time of its entry is March 9, 1977,
and written notice of entry thereof served

3.
by mail on me in envelope postmarked
MAR 10 AM 1977.

Petition for certiorari was filed within 90 days of that date.

This Court's jurisdiction is invoked under 28 USC 1257 (3).

QUESTIONS PRESENTED

1. Whether a lien can be levied on citizen's taxpayers real properties under and pursuant to a statute, N.Y. Town Law

§ 198, 198 (3) that a County acts under in attempting to impose the tax lien and to seize their real properties when the said citizens are outside of the terms and authority of the statute.

2. Whether a Water Tax and delinquent bill can be passed legally and constitutionally under a statute, N.Y. Town Law § 198, 198 (3) that a County acts under when the terms and authority of the said statute are inapplicable to the citizens

-taxpayers.

3. Whether the poisonous fruits of official illegality, void, unconstitutional, without jurisdiction, flagrant violations of the Constitution and the statutes by the Town Board binds the other subdivisions of the State.
4. Whether, when a statute, Town Law § 198, 198 (3) is attacked as wholly inapplicable by its stated terms therein to citizens-taxpayers real property owners, it may be challenged in judicial proceedings other than those prescribed by the Real Property Tax Law, or any statute as "exclusive" when the invalidity and total inapplicability affects the entire statute, including the limitation and restrictions on the remedy provided in it.
5. Whether the Courts failure to give citizens-taxpayers real property owners

5.

Larkin, a full, factual meaningful hearing so that the true record facts could be presented with constitutional effective assistance of Counsel deprived them of due process of law, making it possible to dispose of their properties without due process of law, equal protection of the laws, and fundamental fairness.

6. Whether the deliberate suppression of evidence favorable to citizens-taxpayers real property owners would in itself be a deprivation of rights, a constitutional violation of due process of law, equal protection of the laws, of fundamental fairness; and is blatant invidious prejudicial discrimination.

7. Whether the State of New York, any subdivision thereof, can deny citizens-taxpayers real property owners their constitutional right to have rights by the State's rule making and legislation

applied which would abrogate the said citizens' rights under color of right and color of law, with irreparable prejudicial application and interpretation by said State as to citizens-taxpayers real property owners of Water District No. 3.

CONSTITUTIONAL PROVISIONS and

STATUTES INVOLVED

The pertinent provisions of the United States Constitution Amendments are: USCA Const., Amdt 1, p. 5, Amdt V, p. 5, Amdt. VI, pp. 5-6, Amdt. VIII, p. 6, Amdt. XIV

§1, p. 7. 18 USC§242, 42 USC§1893. New York State Constitution: 2 McKinney's Const. Art I, §1, p. 55. 61 McKinney's N.Y. Town Law §198, 198 (3d), p. 41.

STATEMENT OF THE CASE

The companion case herein Edward J. Larkin and Julia Larkin, petitioners, v. Town Board of the Town of Fleming, Cayuga County, et al gave rise to this case, and

7.

Petitioners refer to same.

On August 29, 1974, petitioners commenced this action to review the proceedings of the Respondents Farrell, et al. Following an oral argument on December 9, 1974, the Court dismissed the petition *** relative to tax assessment matters for the reason: the conclusion of the court that the exclusive remedy in matters of this nature is provided for in the Real Property Tax Law and that these remedies were not pursued by the petitioners.

The respondents answer (R22, par.1) admitted the allegations in par. 14 of petitioners' petition (R12), Verified Complaint (R20, par. 14) and the New Party Respondents verified answer (R 40, par. 1) and Verified Answer of Respondents (R 45, par. 1) admitted the allegations in par. 13 of Petitioners' Amended Verified Petition (R 36) that: "No service

8.

connections were made, and there was and is continuously none ever made to either of the properties of Petitioners."

The respondents' answer (R 22, par.1) also admitted the allegations in Par. 12 of the Petitioners' Verified Complaint (R19) that: "The Water tax was put on the books as a delinquent water bill and the Cayuga County Board of Supervisors passed it as a delinquent water bill."

Respondents David A. Farrell, et al, and the Cayuga County Board of Supervisors acted under the terms of and pursuant to the N.Y. Town Law § 198, 198(3d) in attempting to impose the tax lien and seize Petitioners Larkin real properties. The Cayuga County Board of Supervisors proceedings show that. It is not denied.

The said statute is wholly inapplicable by its expressly stated terms and conditions to the Larkins, in that the Peti-

tioners are neither users nor consumers of any water, and they have no real properties upon which or in connection with which any water was ever used, there was never any supply of water to them or their properties.

Their real properties being threatened under color of law and of right, the Larkins immediately arose to protect their basic civil rights in property, by this action against the Respondents and New Party Respondents.

The questions were raised by pleadings in the Supreme Court, Cayuga County, N.Y. Said Court ordered the dismissal of the petition of the petitioners for a review by this Court of all the actions and proceedings by the Town of Fleming and the County of Cayuga relative to tax assessment matters is hereby dismissed based on the conclusion of the court that the

exclusive remedy in matters of this nature is provided for in the Real Property Tax Law and that those remedies were not pursued by the petitioners,***", and by briefs in the Appellate Division, Fourth Department which stated in its memorandum:"*** "It is acknowledged that petitioners have not connected their premises to the water system which is available for their use. They rely upon Town Law, § 198 (subd.3 (d) in urging that their lack of use of the water precludes a water tax against their property. Such reliance is misplaced. That section applies to charges for water actually used. Respondent Board has full authority to assess water district real property to pay for the construction costs of a water system (Town Law, §§ 202, subd, 2; 202, subd. 3). ****The petition has not been brought either under the Real Property Tax Law or as an Article 73 proceed-

ing (Real Property Tax Law, § 702,) Subd. 2; CPLR 217) **."

Said questions were raised in the N.Y. Court of Appeals by briefs of Petitioners. The said Court of Appeals merely affirmed the lower Court's judgment.

ARGUMENT

Much of the argument in companion case is relevant hereto.

The Appellate Division's reasoning is based on a false assumption. It fails to realize that the attempt to seize the Petitioners' real properties is made solely under the N.Y. Town Law §198 (3d) by the Cayuga County Board of Supervisors and Respondents. Seizure of real properties of the Larkins petitioners under said N.Y. Town Law §198, 198(3d) was and is inapplicable and obnoxious to the Larkins citizens-taxpayers on constitutional grounds of due process of law and the equal protec-

tion of the laws, of fundamental fairness, of natural justice, and in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

Said Appellate Division would give no effect to its own case, *Mtr of Crystal v. City of Syracuse*, 47 AD2d (1975) at p.30 wherein it stated: "***the taxation of real property is authorized solely by statute. **tax statutes must not be extended by implication beyond the clear import of the language used.***they are to be construed most strongly against the government and in favor of the taxpayers *** and *** they must be given practical construction and be interpreted as an ordinary person reading them would understand them. ***." *Whitney v. Thomas*, 23 NY 281 (1861) 285.

Lynch v. Household Finance Corp., 405 US 538 (1972): "***the right to enjoy

property without unlawful deprivation,**"

The reasoning by the said Appellate Division in practical effect avoids the vital basic fact that the Cayuga County Board of Supervisors powers and authority is limited to, by & circumscribed by Town Law §198, (3d), 198 under which it presumed to take jurisdiction over the real properties of citizens-taxpayers, and the directions of the statute must be strictly pursued, and thus would the Appellate Division allow unlawful deprivation of real properties herein.

All the Parties, the Town Board, Cayuga County, and even the Appellate Division admits and states that N.Y. Town Law § 198,198 (3d) applies to charges for water actually used.

A Water Tax and delinquent bill can not be passed legally and constitutionally by the Cayuga County Board of Supervisors

under Town Law §198, 198 (3d) against citizens-taxpayers Larkin real properties when no service connections were made and none were ever made to their properties.

N.Y. Town Law §198 (3d) states specifically that "The town board shall establish *** the water rates to be paid by consumers ***. Such water charges shall be a lien upon the real property upon which or in connection with which the water was used. *** Such statements shall contain a brief description of the property upon which the water was used,***. The Board of Supervisors shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax rolls of the various towns under the name of "Water Rents."

The poisonous fruits of official illegality, void, unconstitutional, without jurisdiction, flagrant violations of the

Constitution and the statutes of the N.Y. Town Law by the Town Board are relevant, pertinent herein, and binding upon the other subdivisions of the State, Cayuga County, et al in that having a water tax and delinquent water bill is but the culmination and result of the Town Board's actions, and failure to deliberately non-comply with the conditions-precedents to gain their rights & authority to act against the Larkins. The attempted transfer by the Town Board passes nothing which could be made legally and constitutionally the basis for a seizure of properties as the alleged tax lien was & is founded on proceedings that were and are void, illegal, without jurisdiction and unconstitutional.

Contrary to the Appellate Division's memorandum, the Petitioners have stated clearly and forcefully where error exists in their amended verified petition. R 32

(8) (a) 1,2, R 33-38 inclusive, and in their briefs to the Courts.

When a statute, Town Law § 198, 198(3d) is attacked as wholly inapplicable to petitioners by its stated terms therein, it may be challenged in judicial proceedings other than those prescribed by the Real Property Tax Law, or any statute as "exclusive"; the invalidity and total inapplicability affects the entire statute, including the limitation and restrictions on the remedy provided therein.

The statute as applied and interpreted to petitioners by the State makes the statute void under federal law.

Review is still available where the assertion is that the taxing authorities lacked jurisdiction to make the assessment.

The statute as construed and applied to citizens-taxpayers Larkin deprives them

of their properties without due process of law in contravention of the Fourteenth Amendment of the United States Constitution. Ex parte Virginia, 100 US 339 (1880); 18 USC § 242.

The Courts failure to give citizens-taxpayers Larkin a full factual meaningful hearing so that the true record facts be presented with constitutional effective assistance of Counsel deprived them of due process of law, making it possible to dispose of their properties without due process of law, equal protection of the laws, and fundamental fairness.

The amended verified petition states a cause of action. R32 (8) (a) 1,2, R33, 34-38 inclusive. When different persons don't pay any assessments, naturally the Larkins' real property assessment is at a higher proportional valuation or rate than the assessment against other property in the

district. R34 (d), (f), (g), (h).

When fees are paid to town attorneys contrary to Town Law § 27(1) of at least and over \$8,500, R 33, 34, when private individuals are benefitted illegally and unconstitutionally and gifts made prohibited by N.Y. State Const. Art. VIII, § 1, Town Law § 196, R34 (1), R 35, the tax burden is increased unconstitutionally.

When thousands of dollars are overspent and paid illegally and unconstitutionally which are far in excess of the said \$36,000 the Town Board is attempting to obtain in the companion case herein, the tax burden increases unconstitutionally. When an extra \$65,000 is contracted for without a hearing and petition, the tax burden is increased. The true financial facts of the gross exceeding of the authorized maximum bonded share of the taxpayers-real property owners of Water District No. 3 from the

original one-half of the \$348,000 or \$174,000 mandated in the petition to establish the said Water District No. 3 to an unauthorized total grand debt of \$472,365 as of Dec. 1976 as set forth in the annual certified records submitted to said Board of Supervisors by Town Of Fleming, Cayuga County, N.Y. for the years 1965 thru 1976. When the said district between 1969 and 1973 collects in taxes approximately \$35,516 but only \$18,000 is paid on the bond anticipation notes, and a Town Justice & Board member when asked why states: "The Town had other Town bills to pay." That said \$67,000 approximately should have been applied on the Fleming Third Water District anticipation notes for which it was levied and collected and there would be no need for any new \$36,000.

The Appellate Division statement that:

"*** While the Board denies the allegation of lack of notice and public hearing, the record is unclear on the subject." (See its Memo), the Court would in effect condemn the citizens-taxpayers Larkin without due process of law, circumvent the law so that effective judicial review could not be had, and contrary to law do away with the statutory condition precedent that the Town Board must prove in fact. The Court would thus reverse the burden of proof that is on the Town Board. It would give its aid, in effect and substance, to allow the Petitioners properties to be deprived, wrested, seized from them and condemned the Larkins without due process of law and the equal protection of the laws by fatally defective proceedings on the part of the Town Board, and of Cayuga County.

Adams v. Washington & Saratoga R.R. Co.,

10 NY2d 328 (1852) 329, 333-335, an attempt to divest the plaintiff of his title to the premises in question. *** p. 239: "****This is a mere naked power, and its due execution is not to be made out by intendment: it must be proved. It is not a case for supposing that public officers have done their duty, but what they have in fact done must be shown. *** The Petitioners-Appellants "offered to show that the contingency mentioned in the statute never arose. If the facts offered to be proved were admitted to be true, it would follow that the assessment *** and the order or decree *** were utterly void.***."

Deliberate suppression of evidence favorable to the Petitioners Larkin would be in itself a deprivation of rights, and a constitutional violation of due process of law, equal protection of the laws, of

fundamental fairness, of substantial justice; and is blatant prejudicial invidious discrimination.

New England Divisions Case, 261 US 184.
 Conley v. Gibson, 355 US 41, 45.
 Boyd v. Gullett, 64 FRD 169 (1974) 173.
 McNabb v. United States, 318 US 332 (1943).
 Dennis v. U.S., 341US 494, 71 S Ct 857,
 858.

Silverthorne Lumber Co. v. US, 251 US 385
 (1920) 392.

Allied Stores of Ohio, Inc. v. Bower, 358
 US 522 (1959)

Matter of Burke v. Sugarman, 33 NY2d 39
 (1974) 45: "The doctrine of laches has no
 application, since failure to comply with
 constitutional requirements *** is a
 continuing and constitutional wrong.***".

If lack of discrimination cannot be
 assumed against nonresidents, it surely
 also cannot be assumed against residents.

Yale & Towne Mfg. Co., 252 US 60, 81 (1920). Validity of a tax cannot be established by its mere imposition. Mullary v. Anderson, 342 US 415, 418 (1952).

18 USC § 242. Laing v. United States, 96 S Ct 472 (1976). Com'r v. Shapiro, 96 S Ct 1062.

REASONS FOR GRANTING THE WRIT

Equal justice under the law must apply equally to everyone. If procedural safeguards protecting the citizens in their rights and guarding them against arbitrary action by the Government can be diluted and disregarded now, then aid, comfort and encouragement would be given to the law breakers, to the destroyers of our long fought for rights and procedural safeguards, encouraging them to sweep away our Bill of Rights, our laws, and not give effect to them, nor enforce their demands unless it suited their purposes, and

would allow the law breaker to live without the statutorily prescribed limits.

The citizens' rights and freedoms would be continually subtly eroded away until our republic became a dictatorship.

Free, full and complete exposure to the truth must be allowed the citizens in the Courts with absolute insistence upon procedural regularity to stop and prevent the dogged insistence on the destruction of human rights, liberties, properties, and the freedoms of our citizens.

The citizen must be given the right to present the complete true facts so that there can be an effective, impartial, just, non-discriminatorily analysis of the facts by judicial review.

The rules of evidence and the burden of proof must not be twisted and reversed so as to aid anyone, especially the State.

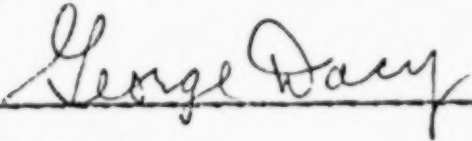
25.

This case calls out for Justice and for Truth.

CONCLUSION

For the above discussed reasons, it is respectfully submitted that the Court grant the Petition for Writ of Certiorari.

Respectfully submitted,



GEORGE DACY

26 Lewis Street

Auburn, New York 13021

Tel. No. (315) 252-1444

Attorney & Counsel for Petitioners

APPENDMENT OF JUDGMENT

State of New York

Court of Appeals

At a session of the Court, held at
Court of Appeals Hall, in the city of
Albany on February 22, 1977.

Mo. No. 1191

In the Matter of the Application of
Edward J. Larkin and Julia Larkin,

Appellants,

v.

Town Board of the Town of Fleming, et
al., Respondents,

40 NY2d 917 (1977).

Edward J. Larkin and Julia Larkin,

Appellants,

vs.

David A. Farrell, Cayuga County Treasur-
er, et al., and Town Board of the Town of

Fleming, et al.,

Respondents,

40 NY2d 917 (1977).

Motions for leave to appeal to the Court of Appeals in the above causes having been heretfore made upon the part of the appellants herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motions be and the same hereby are denied.

s. Joseph W. Bellacosa

Joseph W. Bellacosa
Clerk of the Court

NOTICE OF ENTRY

Sir: Take notice of an Order of which the within is a copy, duly granted in the within entitled action, on the 22nd day of February, 1977, and duly entered in the office of the Clerk of the County of Cayuga on the 9th day of March 1977

Dated Auburn, N.Y. March 9, 1977

James G. Cuddy

CUDDY AND DURGALA

Attorneys for Respondents

Office and Post Office Address

Carr Building - 188 Genesee Street

P.O. Box 458

AUBURN, NEW YORK 13021

(315) 253-3263

- - -

Written notice of entry thereof served by mail on George Dacy, Esq., 26 Lewis Street, Auburn, New York 13021, Attorney for Petitioners, in envelope postmarked AUBURN, N.Y. 13021 MAR 10 AM 1977

APPENDMENT OF JUDGMENT, MEMO
Supreme Court of the State of New York
Appellate Division, Fourth Judicial
Department.

Edward J. Larkin and Julia Larkin,

Appellants,

vs.

David A. Farrell, Cayuga County Treasurer,
et al., and Town Board of the Town of
Fleming, Cayuga County, New York and
Walter Oliver, et al., constituting the
said Board and Henry Roloson, Clerk of
said Town, Respondents.,

52 AD 2d 1069 (May 28, 1976).

Judgment unanimously affirmed without
costs. Memorandum: Here, and in a compan-
ion case decided herewith (see in the
Matter of Larkin v. Town Board of the Town
of Fleming, Appeal No. 1, -AD2d-), peti-

tioners assert multiple claims of illegal action by the respondent Town Board of the Town of Fleming (Board) and others, relating to the financing of the installation of the water system in Water District 3, Town of Fleming, Cayuga County, and the tax assessment against petitioners' real property in the district. They seek a review of the assessment proceedings and a preliminary injunction enjoining respondents from selling or otherwise encumbering petitioners' real property.

Trial court properly denied the motion for a preliminary injunction, vacated a temporary restraining order theretofore issued and dismissed the petition. "It is not sufficient for the taxpayer to assert merely the conclusions of illegality or error." (Matter of Grossman v. Bd. of Trustees, 44 AD2d 259, 263) as, in so many instances petitioners have done here. Petitioners are obliged to "indicate where error exists" (Matter of Grossman v. Bd.

of Trustees, *supra*, p. 263). The extent that the petition as amended claims inequality of assessment, it fails to meet the test of Real Property Tax Law, § 706. It does not allege that the assessment against petitioners' property is at a higher proportional valuation or rate than the assessment against other property in the district. Additionally, there is no statutory basis for petitioners' claim that the district water tax should be subject to a referendum.

Indeed, we find all of petitioners' claims to be without merit and only two are worthy of further comment. It is acknowledged that petitioners have not connected their premises to the water system which is available for their use. They rely upon Town Law, § 198, subd. 3(d) in urging that their lack of use of the water precludes a water tax against their pro-

perty. Such reliance is misplaced, That section applies to charges for water actually used. Respondent Board has full authority to assess water district real property to pay for the construction costs of a water system (Town Law, §§ 202, subd. 2, subd. 3).

Petitioners further allege that the Board failed to publish notice of the completion of the water district assessment roll and of a public hearing to consider objections to the roll (see Town Law, § 239). It is argued that the Board is without jurisdiction to levy a tax notice against petitioners' property until such notice is published and a hearing held (Real Property Tax Law, § 702, subd. 2).

While the Board denies the allegations of lack of notice and public hearing, the record is unclear on the subject. It is clear, however, that there has been a

water tax assessment against petitioners' property for several years. It can be inferred from the amended petition that such taxes have been levied against all taxable properties within the district since at least January, 1969 and moneys collected therefrom have been used to retire bond anticipation notes issued for the costs of construction. Petitioners have persistently refused to pay the taxes so assessed but have never before protested on the basis of failure of notice and lack of a hearing regarding the assessment roll.

The petition has not been brought either under the Real Property Tax Law or as an Article 78 proceeding (Real Property Tax Law, § 702, subd. 2; CPLR 217). On the whole history of the creation of Water District 3 and the adoption of the unit system of assessment against district property, and upon the failure of peti-

tioners to act for more than five years from the date they received actual notice of the assessment and tax against their property, they should not now be heard to attack the assessment roll on this basis.

Assuming, arguendo, that the Board erred in this respect, petitioners, despite full notice to them of the tax levy, have never demanded that the Board perform its duty in regard to the giving of notice or the holding of a public hearing, nor have they pursued administrative remedies provided for in Article 5 of the Real Property Tax Law.

Exhaustion of such remedies is an essential precondition to judicial review (Matter of Grossman v. Bd. of Trustees, supra). (Appeal from Judgment of Cayuga Supreme Court, Blauvelt, J. - Tax assessment.)

Present: Marsh, P.J. - Moule, Simons,

Dillon, Goldman, J.J.

ORDER APPEALED FROM SUPREME COURT,

CAYUGA COUNTY.

At a Trial Term of the Supreme Court held in and for the County of Cayuga at the Cayuga County Court House in the city of Auburn, New York on the 9th day of December 1974.

EDWARD J. LARKIN and JULIA LARKIN, his wife, Route 34, RD 1, Auburn, New York,

Petitioners ,

-vs-

DAVID A. FARRELL, Cayuga County Treasurer, and CAYUGA COUNTY FINANCE COMMITTEE, constituted of ROBERT A. CONTIGUGLIA, Chairman, and WARD O'HARA, PAUL C. BURKE, Laverne E. Stock, and Thaddeus FUS,

RESPONDENTS,

and

TOWN BOARD OF THE TOWN OF FLEMING, Cayuga
County, New York, and WALTER OLIVER,
GEORGE DUCKETT, ROBERT DiLALLO, WILLIAM
BOWEN, GEORGE HASSLER, constituting said
Board, and HENRY ROLOSON, Clerk of said
Town,

New Party Respondents.

Cayuga County Index No. 74-1542.

The petitioners having duly petitioned this court for a review of the proceedings of the above named respondents relative to tax assessment matters and tax sales and having obtained a temporary restraining order by order of Supreme Court Justice Parker J. Stone, signed at Syracuse, New York, on August 29, 1974 which said temporary restraining order enjoined the Cayuga County Treasurer and the members of the Finance Committee of the Cayuga County Legislature from selling property of the petitioners located in the Town of Fleming, Cayuga County, New York, until such time as the motion could be heard in Supreme Court and

The petitioners having appeared in Supreme Court, Cayuga County, New York, on October 15, 1974 and requested the addition of the Town Board of the Town of Fleming and the Town Clerk of the Town of Fleming

as additional respondents in this proceeding, and

By order of Supreme Court Justice John J. Mastrella, signed on October 21, 1974, said Town Board of the Town of Fleming and the Town Clerk of the Town of Fleming were added as "New Party Respondents" in this proceeding and the respondents and new party respondents having duly filed their answers to the petition, and

Said matter having been argued before this court on December 9, 1974, George Dacy, Attorney for the petitioners, having appeared and argued in support of the petition and Raymond S. Sant as Cayuga County Attorney having appeared for the respondents, David A. Farrell, Cayuga County Treasurer, et al and James G. Cuddy having appeared as attorney for new party respondents, the Town Board of the Town of Fleming, et al, and said

Attorneys Sant and Cuddy having argued in opposition to said petition, and deliberation having been had,

NOW, on motion of Raymond S. Sant and James G. Cuddy, attorneys for the respondents and new party respondents respectively, it is

ORDERED that the petition of the petitioners for a review by this court of all the actions and proceedings by the Town of Fleming and the County of Cayuga relative to tax assessment matters is hereby dismissed based on the conclusion of the court that the exclusive remedy in matters of this nature is provided for in the Real Property Tax Law and that those remedies were not pursued by the petitioners, and it further

ORDERED that the motion for a preliminary injunction is denied and it is further

ORDERED that the temporary restraining

39.

order is herein vacated.

ENTER

Dated:

December 18th, 1974

Arthur Ervin Blauvelt, J.S.C.

Order signed and entered December 18th,
1974 in Cayuga County Clerk's Office.

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61 McKinney's N.Y. Town Law, § 198 Powers of Town Boards with respect to improvement districts, at p. 41: ***

§ 198, subd. 3d: Water rates. The town board shall establish, from time to time, the water rates to be paid by consumers and may provide for the payment of said water charges in advance. *** Such water charges shall be a lien upon the real property upon which or in connection with which the water was used. The town board may provide by ordinance or resolution that unpaid water charges in arrears for thirty days or longer shall be subject to a penalty not exceeding ten per cent of the amount due, and may further provide for the cutting off the supply of water if such water charges are not paid within sixty days from the date due. At the same time as the filing of the estimates specified in section 104 of this

chapter, or in case the town board shall elect by resolution a subsequent date, which in no event shall be later than November first in any year, the town clerk shall annually file with the town board, and with the supervisors of adjoining towns in which permits have been issued to property owners, statements showing the unpaid water charges in the respective districts and towns and which have not appeared on any such statements previously filed. Such statements shall contain a brief description of the property upon which the water was used, the names of the persons or corporations liable to pay for the same and the amount chargeable to each. The supervisor of the town in which the districts are located and the supervisors of adjoining towns in which permits have been issued shall transmit such statements to the board of supervisors of the

county at the next regular meeting. The board of supervisors shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax rolls of the various towns under the name of "Water Rents". Such tax shall be paid to the supervisors of the respective towns. The supervisors of adjoining towns shall pay the same out of the first money collected which is available for town purposes to the supervisor of the town in which the water districts are located. All of the provisions of the existing tax laws of the State of New York covering the enforcement and collection of unpaid town taxes or assessments for special improvements in the several towns of the State of New York not inconsistent herewith shall apply to the collection of such unpaid water rents. Such water rates when collected shall be

43.

applied toward the maintenance, operation, enlargement, and improvement of the water system and for the payment of the principal and interest of bonds issued for the purposes of such district.
